

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding the  
Implementation of the Suspension of Direct  
Access Pursuant to Assembly Bill 1X and  
Decision 01-09-060.

Rulemaking 02-01-011  
(Filed January 9, 2002)

**OPINION GRANTING INTERVENOR COMPENSATION  
TO THE UTILITY REFORM NETWORK FOR****1. Introduction**

This decision awards \$40,459.66 to The Utility Reform Network (TURN) in compensation for its substantial contribution to Decision (D.) 04-07-025, D.05-01-040, D.05-02-051, and D.05-03-025. These decisions involve the Commission's program to establish a "Cost Responsibility Surcharge" (CRS) for Direct Access (DA) and Departing Local (DL) customers, pursuant to the suspension of DA by Assembly Bill (AB) 1X.

While this rulemaking remains open and further proceedings may occur, the above-referenced decisions culminating in D.05-03-025 mark the conclusion of the phase of the proceedings regarding the treatment of DA load growth. Under our rules, TURN need not await close of the rulemaking before seeking compensation for its contributions in this phase.

**2. Requirement for Awards of Compensation**

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable

costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.<sup>1</sup>

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)
5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs are reasonable and are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

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<sup>1</sup> Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

### **3. Procedural Issues**

A PHC was held on June 28, 2002. TURN timely filed its NOI on July 24, 2002. On August 28, 2002, Administrative Law Judge (ALJ) Pulsifer issued a ruling finding that TURN is a customer and meets the requirement for financial hardship. In D.04-02-017, TURN was awarded \$219,866 for its contributions to earlier phases of this proceeding. TURN filed its subject request for compensation on May 13, 2005, within 60 days of D.05-03-025 being issued. We find that TURN has satisfied all the procedural requirements here necessary to request compensation.

As noted earlier, this proceeding is still open; however, under Rule 76.72 of our Rules of Practice and Procedure, and intervenor need not await the decision closing a proceeding if it has substantially contributed to the resolution of an issue in an earlier decision. Given that we have resolved the phase of the proceeding in which we address the treatment of DA load growth, TURN may now seek compensation for its contributions to the decisions cited above.

### **4. Substantial Contribution**

In evaluating whether TURN made a substantial contribution to the above-referenced decisions in this proceeding we look at several things. First, we consider whether the ALJ or Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by TURN. (*See* §1802(i).) Second, we consider if TURN's contentions or recommendations paralleled those of another party, or if TURN's participation materially supplemented, complemented, or contributed to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision. (*See* §§1802(i) and 1802.5.) As described in §1802(i), the assessment of whether TURN made a substantial contribution

requires the exercise of judgment. In assessing whether an intervenor meets this standard, the Commission typically reviews the record, composed in part of pleadings of the intervenor and, in litigated matters, the hearing transcripts, and compares it to the findings conclusion, and orders in the decision to which the intervenor asserts it contributed. It is then a matter of judgment as to whether the intervenor's presentation substantially assisted the Commission.

With this guidance in mind, we turn to the claimed contributions TURN made to the referenced decisions in this proceeding, as summarized below.

**A. Substantial Contribution to D.04-07-025  
(DA Load Growth Principles)**

D.04-07-025 adopted principles governing the treatment of DA load growth in the context of the suspension of DA by AB 1X and the Commission's "standstill" policy. TURN contributed to this decision by helping to ensure that the limits on DA load growth would be enforceable by the Commission.

D.04-07-025 adopted TURN's position with respect to the requirement for an affidavit process through which large DA customers would attest to their contractual DA load limits and their conformance to those limits. This action is discussed on pages 27-28 of the decision and in Finding of Fact 14 (p. 40) and Conclusion of Law 11 (p. 42). The adopted Principles 3 and 6 conform to recommendations offered by TURN in its opening and reply comments on the Draft Decision (DD) of ALJ Pulsifer, which were filed on June 28, and July 6, 2004.

**B. Substantial Contribution to D.05-01-040  
(DA CRS Obligations for 2001-2003)**

D.05-01-040 adopted the true-up of the historical DA CRS obligation for 2001-02 and provided an estimate of the liability for 2003. Much of the work in this phase of the proceeding consisted of collaborative workshops and comments

among the parties and Department of Water Resources (DWR)/Navigant to identify and resolve various policy and technical issues associated with the true-up calculation. TURN filed opening and reply comments on the true-up on January 16 and 30, 2004, and opening and reply comments on the DD on January 18 and 24, 2005.

D.05-01-040 adopted TURN's position that actual recorded volumes of DA load should be used in the bundled ratepayer indifference calculation (Decision, p. 48 and Conclusion of Law 15, p. 58.) The Commission agreed with TURN that separate CRS calculations for DA and Departing Load (DL) were not necessary at this time, but may be required in the future as DL increases, and that DL CRS payments should not be credited against the DA CRS obligation but tracked separately (Decision, pp. 7-10). The Commission also agreed with TURN that Alliance for Retail Energy Markets (AREM's) proposed "crediting" of recorded one-cent energy procurement surcharge revenues against historical DA CRS liabilities was inappropriate (pp. 27-28.)

**C. Substantial Contribution to D.05-02-051  
(CRS Liability for Customer Generation DL)**

On March 23, 2004, California Large Energy Consumers Association (CLECA) and California Manufacturers & Technology Association (CMTA) filed a petition for modification of D.03-04-030 in this docket, asking that DA customers who later become Customer Generation (CG) DL be relieved of any past DA CRS obligations. TURN opposed the petition in a response filed April 22, 2004, arguing that such CGDL customers should only be relieved of CRS liability prospectively, but not retroactively. TURN also responded on February 22, 2005, to CLECA/CMTA's comments on the DD. D.05-02-051 agreed with TURN's position and rejected any retroactive forgiveness of DA CRS liabilities.

#### **D. Substantial Contribution to D.05-03-025 (DA Load Growth Affidavit)**

D.05-03-025 adopted the form and process for administration of the DA load growth affidavit originally adopted in D.04-07-025. TURN opposed the efforts of some parties to evade the requirements of that earlier decision via the workshop process. TURN submitted comments on the Working Group report on November 15, 2004, and a reply to comments on the Draft Decision on March 15, 2005. The Final Decision adopted most of TURN recommendations, including proposed language for the “check box” (Decision, p. 4); the requirement for disclosure of contractual volumes (pp. 4-7); rejection of AREM’s proposed changes to Section 4 of the affidavit (pp. 10-11); rejection of a “trigger” requirement for the affidavit (pp. 15-18); and the investor-owned utility obligation to review submitted affidavits (pp. 18-19).

#### **E. Conclusion**

In view of these facts, we conclude that TURN made a substantial contribution to the Commission decisions as described above. We next look at whether the amount of the compensation that TURN requested is reasonable.

#### **5. Reasonableness of Requested Compensation**

TURN requests \$40,577.59 as compensation of costs for its participation in this proceeding, as follows:

<u>Attorney Fees</u>	<u>Hours</u>	<u>Rate</u>	<u>Year Incurred</u>	<u>Total Dollars</u>
Michel P. Florio				
	9.25 hours	\$435	2003	\$ 4,023.75
	52.50 hours	\$470	2004	\$24,675.00
	19.75 hours	\$ 495	2005	\$ 9,776.25
	7.75 hours	\$247.5	2005	\$ 1,918.13
			<b>Subtotal</b>	<b>\$40,393.13</b>
<b><u>Other Reasonable Costs</u></b>				
Photocopying expense				\$162.80
Postage costs				\$ 5.86

Attorney expenses		\$ 16.00
	<b>Subtotal</b>	<b>\$184.66</b>
	<b>Total</b>	<b>\$40,577.79</b>

The components of TURN's request must constitute reasonable fees and costs associated with its substantial contribution. Thus, only those fees and costs associated with the TURN's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

To assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of TURN's participation should bear a reasonable relationship to the benefits realized through its participation. This showing assists us in determining the overall reasonableness of the request.

In a rulemaking such as this, productivity is not easily quantified. We therefore apply qualitative standards that consider the breadth of scope of the proceeding, how significant were the policies established and how great was the intervenor's impact on the outcome? This rulemaking establishes policies and program elements regarding DA load growth, identifying CRS true-up calculations, retroactive CRS obligations, and other matters. Direct access issues are significant for the electric industry, and TURN's impact on outcomes was substantial. In most respects, the adopted policies involve qualitative, rather than quantitative measurements; however, in advocating successfully for proper accounting and collection of the CRS, TURN provided clear benefits for the residential and small business ratepayers it represents. Overall we find TURN's participation to be productive.

**A. Claim for Hours of Work Performed**

All work relating to this compensation request involves Florio, TURN's lead attorney and sole representative in this phase of the proceeding. TURN presented a daily breakdown of Florio's hours and a brief description of each activity. TURN's breakdown of hours reasonably supports its claim for total hours.<sup>2</sup>

**B. Hourly Rates for Work Performed**

For Florio, TURN seeks an hourly rate of \$435 for work performed in 2003, and \$470 for 2004. These same rates were approved in D.04-02-017 and D.05-01-029, respectively, and we adopt them here.

For 2005, TURN is requesting a rate of \$495 for Florio. Consistent with Commission practice, Florio's time for preparing the compensation request, a total of 7.75 hours, is billed at half that rate. TURN proposed this same 2005 rate in Rulemaking (R.) 04-10-010 (hourly rates for intervenor compensation awards). That proceeding is still open. Here, we will adopt an hourly rate of 490 for the 19.75 hours spent in 2005 relating to substantive contributions, resulting in a reduction in the compensation award of \$5 per hour or \$98.75 total. The \$490 hourly rate was previously approved for Robert Gnaizda for 2005, in D.95-06-031 and we consider his compensation level to be comparable to that of Florio. We shall also apply the \$490 rate, billed at one-half rate for Florio for the brief amount of time spent in 2005 preparing the request, resulting in a further

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<sup>2</sup> TURN separated the hours associated with travel and preparation of this compensation request and requests compensation at half the usual hourly rate for this time.



reduction of \$19.37 from the total award. Adopting this rate shall not prejudice for any subsequent requests for compensation.

### **C. Itemization of Miscellaneous Expenses**

The itemized direct expenses of \$184.66 submitted by TURN, cover postage, copying, and necessary parking for attending meetings. We find these costs to be reasonable.

## **6. Award**

We award TURN \$40,459.66. This amount is based on the component elements in the table above, less \$118.12 due to reduction of the 2005 hourly rate. Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing July 27, 2005, the 75th day after TURN filed its compensation request, and continuing until full payment of the award is made.

We direct Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison to allocate payment responsibility among themselves based upon their California-jurisdictional electric revenues for the 2004 calendar year, the year in which most costs were incurred. Since this proceeding involved primarily issues common to all three of the major electric utilities, it is reasonable to apportionment of TURN's intervenor award among each of the three utilities accordingly.

We remind all intervenors that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. TURN's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant,

the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

### **7. Waiver of Comment Period**

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

### **8. Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner and Thomas Pulsifer is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. TURN made a substantial contribution to the referenced decisions as described herein.
2. The hourly rates for Florio approved in this order are reasonable when compared to the market rates for persons with similar training and experience.
3. An hourly rate of \$490 for 2005 is reasonable for Florio in that it is comparable to the rate previously approved for Gnaizda.
4. Use of 2005 hourly rate or \$490 results in a reduction of \$118.12 from the amount TURN requested.
5. The total of the reasonable compensation for TURN is \$40,459.66.
6. The appendix to this opinion summarizes today's award.

### **Conclusions of Law**

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation incurred in making substantial contributions to the above-referenced decisions.

2. TURN should be awarded \$40,480.91 for its contribution to D.04-07-025, D.05-01-040, D.05-02-051, and D.05-03-025 in this proceeding.

3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

4. This order should be effective today so that TURN may be compensated without further delay.

## **O R D E R**

### **IT IS ORDERED** that:

1. The Utility Reform Network (TURN) is awarded \$40,459.66 as compensation for its substantial contributions to Decision (D.) 04-07-025, D.05-01-040, D.05-02-051, and D.05-03-025 in this proceeding.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison shall pay TURN their respective shares of the award. Each utility's share shall be calculated based upon their California-jurisdictional electric revenues for the 2004 calendar year.

3. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning on July 27, 2005, the 75<sup>th</sup> day after TURN filed its request for compensation, and continuing until full payment is made.

4. The comment period for today's decision is waived.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**APPENDIX A**  
**Compensation Decision Summary Information**

<b>Compensation Decision(s):</b>	
<b>Contribution Decision(s):</b>	D.04-07-025; D.05-01-040; D.05-02-051; and D.05-03-025
<b>Proceeding(s):</b>	R.02-01-011
<b>Author:</b>	
<b>Payer(s):</b>	PG&E, SCE, and SDG&E

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier ?</b>	<b>Reason Change/ Disallowance</b>
TURN	5/13/2005	\$40,577.79	\$40,459.66		2005 hourly rate reduced